

**REMARKS**

Claims 1-39 are pending in this application and stand rejected. Claims 1, 3-6, 14, 15, 19, and 21-39 have been amended. Applicants appreciate the Examiner's indication that Claims 14-19 and 33-38 would be allowable if rewritten to overcome the rejections under 35 U.S.C. §112, 2<sup>nd</sup> paragraph.

Furthermore, Applicants amended Claims 1, 3-6, 15 and 21-39 to clarify the "basket" limitation so as not to confuse this limitation with any elements defined further in the specification.

Applicants believe the amendments made herein add no new matter. Reconsideration and reexamination of the application is respectfully requested in view of the amendments and the following remarks.

**Objections to Specification**

The specification for this application has been amended to correct the deficiencies noted by the Examiner. A typographical error in the Brief Description of the Drawings has been noted and a revised Brief Description of the Drawings section has been provided herein. Furthermore, paragraphs [0049] and [0054] have been corrected have been amended and replaced by the paragraphs included herein to correct grammatical and typographical errors.

**Objection to Drawings**

Applicants submitted herein a corrected FIG. 2 addressing the Examiner's objection to the drawing on the grounds that the drawing did not contain a proper lead line for reference numeral 34. FIG. 2 has been corrected to show the lead line of reference numeral 34 terminating on the water spray assembly.

**Rejections under 35 U.S.C. §112**

Claims 14, 19, 33 and 38 have been amended and now provide sufficient antecedent basis for all limitations. Applicants note that Claim 21 provides sufficient antecedent basis

for the limitation "the at least one side sprayer" as the antecedent basis is provided in the preamble for Claim 24. Rejected Claims 15-18, 22-32, 34, 35-37 and 39 are dependent from the currently amended claims and/or Claim 21 and should now be considered definite due to the amendments provided herein.

**Rejection under 35 U.S.C. §102(b)**

Claims 21, 23-32 and 39 stand rejected under 35 U.S.C. §102(b) as being anticipated by Fiocca et al., U.S. Patent No. 3,752,322. This rejection is respectfully traversed.

"To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim." *Brown v. 3M*, 265 F.2d 1349, 1351 (Fed. Cir. 2001); *In re Robertson*, 169 F.3d 743 (Fed. Cir. 1999).

Fiocca discloses an upper rack 20 of a dishwashing machine including an open mesh formed by a plurality of longitudinally spaced laterally extending wire support members 24 which are secured to a plurality of laterally spaced longitudinally extending wire support members 26. In addition to this open mesh structure, a set of collapsible support members 34 and 36 are provided and can be adjusted to retain lightweight articles in a fixed position during cleaning.

Claims 21, as amended herein, clearly defines and requires "an adjustable utensil carrier located within the utensil holding space and adjustable relative to the bottom of the basket to form an inclination angle relative to the bottom wall of the basket such that a utensil supported by the adjustable utensil carrier can be positioned such that a food contact surface of the utensil is exposed to direct spray from both the water spray assembly and the at least one side sprayer." Fiocca discloses and claims a dishwasher rack 20 with rotatable support members 34 and 36 that adjust relative to the bottom of the rack that define a portion for the dishwasher rack 20 for retaining and holding in position lightweight articles. In other words,

US20030359

Fiocca does not disclose an adjustable utensil carrier as independent from and adjustable with respect to a primary dishwasher basket as is claimed and defined in this application.

Because Fiocca does not contain "every element and limitation of the claimed invention," *Brown, supra*, the Examiner's §102 rejections of Claim 21 are erroneous and should be withdrawn. Because Claim 21 is not anticipated by Fiocca, dependent Claims 23-32 and 39 are not anticipated by Fiocca for the same reasons.

**Rejection under 35 U.S.C. §103**

Claim 1-13, 20 and 22 stands rejected under 35 U.S.C. §103 as being unpatentable over Fiocca and over Applicants' Admitted Prior Art in view of Fiocca. This rejection is respectfully traversed.

It is necessary that Fiocca or Applicants' Admitted Prior Art teach or suggest every element of the invention in this application, the adjustable utensil carrier, for a §103 rejection to be applicable. Neither Fiocca nor Applicants' Admitted Prior Art teach or suggest every element of the invention and thus the Examiner's §103 rejection is improper.

As previously stated, Fiocca discloses and claims a dishwasher rack 20 with rotatable support members 34 and 36 that adjust relative to the bottom of the rack that define a portion for the dishwasher rack 20 for retaining and holding in position lightweight articles. Fiocca does not, in any way, suggest an adjustable utensil carrier as recited in the claims.

Furthermore, Applicants' Admitted Prior Art does not teach or suggest an adjustable utensil carrier, as is acknowledged by the Examiner in the Office Action. In fact, in the Description of the Related Art section of this application, Applicants noted that "[i]t is desirable to have an automatic dishwasher having an auxiliary basket that can be readily adjusted to accommodate a cooking utensil in an optimal position relative to a rotating water spray assembly and spray nozzles, yet accommodate other utensils without interference from the auxiliary basket."

US20030359

For these reasons, the Examiner's §103 rejections of Claims 1-13, 20 and 22 are erroneous and should be withdrawn.

### CONCLUSION

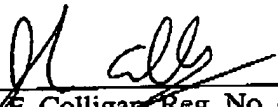
For the reasons discussed above, Applicants believe that claims 1-39 are in condition for immediate allowance. It is respectfully submitted that all of the pending claims in the application are allowable over the prior art of record. Early notification of allowability is respectfully requested.

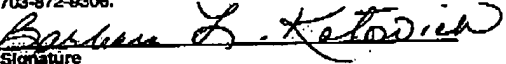
If there are any questions regarding this matter, please contact the undersigned attorney.

Respectfully submitted,

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WHIRLPOOL PATENTS COMPANY  
500 Renaissance Drive - Ste. 102 MD750  
St. Joseph, Michigan 49085

  
John F. Colligan, Reg. No. 48,240  
Telephone: (269) 923-6439

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Date: <u>November 30, 2004</u>	 Signature <u>Barbara L. Katowich</u> (type or print name of person certifying)